

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action No.

v.

05-00067-01-CR-W-HFS

DONALD RAY HANNAH,

Defendant.

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

PENDING CHARGE: An indictment was returned on March 1, 2005, charging that on or about April 16, 1999, in the Western District of Missouri, the defendant DONALD RAY HANNAH, a resident of Lenexa, Kansas, did willfully make and subscribe an Individual Income Tax Return, Form 1040, for the year 1997, which was verified by a written declaration that it was made under the penalties of perjury and was filed with a representative of the Area Director for the Internal Revenue Service Midwest Area at Independence, Missouri, which income tax return the defendant DONALD RAY HANNAH did not believe to be true and correct as to every material matter in that the defendant failed to report as income on his individual income tax return approximately \$1,559,056.90 of long term capital gain received by Millstone Waterways, Inc., a subchapter S corporation wholly owned by the defendant, as he then and there knew and believed, said long-term capital gain was required to be reported by Millstone Waterways, Inc., as capital gain and not deferred gain pursuant to 26 U.S.C. § 1031, and passed through from the Subchapter S corporation to his individual income tax return as capital gain and income. All in violation of Title 26, United States Code, Section 7206(1).

The following matters were discussed and action taken during the pretrial conference:

TRIAL COUNSEL:

Government: Frances Reddis

Case Agent: IRS Special Agent Anothony Hutcherson

Defense: J.R. Hobbs and Marilyn Keller

OUTSTANDING MOTIONS:

1. Defendant's Motion in Limine Regarding Testimony/Records of Stinson, Morrison and Hecker Based Upon Attorney/Client Privilege (Doc. #21)
2. Defendant's Motion in Limine Regarding Uncharged Conduct (Doc. #24)
3. Government's Motion for a Pretrial Ruling on the Defendant's Motion In Limine Regarding Uncharged Conduct(doc #34)

4. Government's Motion for a Pretrial Ruling on Defendant's Motion In Limine Regarding Testimony/Records of Stinson, Morrison & Hecker Based Upon Attorney/Client Privilege (doc #35)
5. Government's Motion for Reconsideration of the Court's Order Granting Defendant's Motion in Limine Regarding Uncharged Tax Conduct (doc #48)

These motions raise two main issues. The parties have already met and discussed these issues with Judge Sachs. Judge Sachs issued an Order, subject to reconsideration, on February 10, 2006.

TRIAL WITNESSES:

Government: 12 witnesses
Defendant: 2 witnesses, defendant may testify

TRIAL EXHIBITS:

Government: 390 exhibits without evidence of the uncharged conduct; 460 exhibits if evidence of the uncharged conduct is admitted.
Defendant: 5 exhibits

DEFENSES: General denial and denial of intent

POSSIBLE DISPOSITION:

(X) Definitely for trial () Possibly for trial () Likely a plea will be worked out

TRIAL TIME: 5 days or less

Government's case including jury selection: 4- 4 ½ days
Defense case: less than 2 hours

STIPULATIONS: The parties are working on and expect to have stipulations as to the admission of documents.

UNUSUAL QUESTIONS OF LAW: The parties have already discussed the issues raised by the motions in limine with Judge Sachs. Two primary issues are presented: whether other tax transactions should be admitted and what testimony and documents are protected by the attorney-client privilege. The district court has given the parties some additional deadlines for filing supplemental briefs.

FILING DEADLINES:

Witness and Exhibit List

Government and Defense: The Friday prior to pretrial conference.

Counsel are requested to list witnesses in alphabetical order on their witness list.

Exhibit Index, Voir Dire, Jury Instructions: Noon, Wednesday, March 15, 2006.

Please Note: Jury instructions must comply with Local Rule 51.1

In connection with the filing of the exhibit index, the parties are directed to attempt to narrow the list of exhibits actually listed there to those exhibits the parties anticipate using at trial.

Motion in Limine: Already on file.

TRIAL SETTING: Criminal jury trial docket commencing Monday, March 20, 2006.

Please note: Government counsel is requesting the second week of the docket because one of their witnesses is only available on March 20, 2006. Defense counsel suggests that the case go forward on March 20, 2006 with the witness being called to testify the afternoon of March 20, 2006.

IT IS SO ORDERED.

/s/ Sarah W. Hays
SARAH W. HAYS
United States Magistrate Judge